IN THE

Supreme Court of the United States

SEPTEMBER TERM, 1979

No. 79-522

HOWARD W. ALEXANDER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Cases:

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Opinions Below

The opinion of the Court of Appeals (Pet. App. A, infra, pp. 1a-10a) has been reported. The decision of the Court of Appeals denying Petitioner's petition for a rehearing by the Panel (Pet. App. C, infra, pp. 12a-13a) has not been reported.

Jurisdiction

The judgment of the Court of Appeals was entered on July 5, 1979 (Pet. App. B, infra, pp. 10a-11a). On August 30, 1979, the Court of Appeals denied a timely petition for a rehearing by the Panel (Pet. App. C, pp. 12a-13a).

The ground upon which the jurisdiction of this Court is involved is Title 28, United States Code, Section 1254 (1) and Rule 37 (b) of the Federal Rules of Criminal Procedure.

Question Presented

Whether the Petitioner's Sixth Amendment guarantee of his right to confront the witnesses against him was violated by the District Court's restriction on cross examination which prevented the Petitioner from exposing the personal bias and hostility of a witness who testified against him.

Statement

On October 14, 1977, after a three week jury trial in the United States District Court, Southern District of Florida, Petitioner was found guilty of having conspired to violate Title 18, United States Code, Section 1341 and Title 15, United States Code, Sections 77q (a) and 77x, in violation of Title 18, United States Code, Section 371 and of having violated Title 18, United States Code, Section 1341 and Title 15, United States Code, Sections 77q (a) and 77x. On October 14, 1977, the Petitioner was sentenced by Judge Sidney M. Aronovitz to three years imprisonment on Count 1 and three years imprisonment on Counts 2, 5, 6, 8, 9, 15, 16, 17, 22, 23, 24 and 25 concurrent to each other but consecutive to Count 1, the Petitioner to be eligible for parole pursuant to Title 18, United States Code, Section 4204 (b) (2).

The Petitioner Howard W. Alexander and four other defendants were charged in a twenty-five count indictment of having conspired to violate Title 18, United States Code, Section 1341 and Title 15, United States Code, Sections 77q (a) and 77x and of having committed twenty-one

substantive violations of Title 18, United States Code, Section 1341 and three substantive violations of Title 15, United States Code, Sections 77q (a) and 77x. The Petitioner was named in each count of the indictment. Count 25 of the indictment is the conspiracy count. Counts 1 through 21 inclusive alleges substantive violations of Title 18, United States Code, Section 1341. Counts 22 through 24 inclusive allege substantive violations of Title 15, United States Code, Sections 77q (a) and 77x.

Prior to trial the defendant Robert J. Allen pleaded guilty to various counts of the indictment and during trial, testified on behalf of the government. At the time he was serving a five year sentence in the State of Texas as the result of having pleaded guilty to a Texas indictment arising out of the same set of facts upon which the indictment in this case was predicated. The defendants Charles J. Diaz and James W. Brewer were severed from the case. The Petitioner Howard W. Alexander and the defendant I. Vasilios were tried jointly.

The Petitioner's motion for a judgment of acquittal at the end of the government's case was granted as to Counts 3, 4, 7, 10, 11, 13, 14, 18, 19, 20 and 21. He was found guilty on the remaining Counts in the indictment.

Prior to the filing of the indictment in this case, the Petitioner and Robert J. Allen, his partner in the brokerage firm of Alexander and Allen Associates, Inc.; along with one of the Company's salesman, Thomas Anthony Preston, were indicted by the State of Texas in an indictment which alleged many of the facts set forth in the subsequently filed Federal indictment.

Upon learning of his Texas indictment, the Petitioner surrendered to the Texas authorities. He entered a plea of nolo contendere to a securities violation alleged in the indictment and agreed to cooperate with the State of Texas in its prosecution of Allen and Preston. The Peti-

tioner was sentenced by the Texas Court to five years probation. When Robert J. Allen learned of the Texas indictment he fled and became a fugitive. He was later apprehended and entered a plea of not guilty to the Texas indictment. When advised by State and Federal authorities that Petitioner was going to testify against him as a State witness, Allen withdrew his plea of not guilty and pleaded guilty to various counts in the Texas indictment. He was sentened to five year imprisonment in Texas and was serving that sentence when he testified against the Petitioner.

The main and most damaging witness to testify against the Petitioner was Robert J. Allen. The government's case against Petitioner was based upon its allegation that Petitioner prepared a financial statement of a company named All Enterprises, Inc.; and that the financial statement overstated the assets of the company. All Enterprises, Inc.; was a company for which Alexander and Allen Associates, Inc.; did an Industrial Bond underwriting and the indictment alleged that the financial statement of All Enterprises, Inc.; which was mailed to prospective purchasers of the Industrial Bond Issue was false and misleading. The witness, Robert J. Allen, was the key prosecution witness against the Petitioner with regard to the Petitioner's state of mind during the preparation of the financial statement of All Enterprises, Inc.; and as to the value of the assets as set forth in said financial statement.

During cross examination of the witness Robert J. Allen, counsel for the Petitioner attempted to expose the personal bias and hostility of the witness against the Petitioner by seeking to inquire whether the witness knew that the Petitioner was going to testify against him during the State trial in Texas. The basis of the Petitioner asking the question which would have established the foundation for a line of questions which would have shown the deep seeded bias

and hostility of the witness against the Petitioner was transcript of prior testimony of the witness taken under oath during a civil proceeding in which the witness testified that he knew that the Petitioner was going to testify against him in Texas and that he didn't think it was nice.

The government objected to the line of cross examination upon the ground that it was precluded from offering any testimony to show that the Petitioner had pleaded Nolo Contendere to a count in the Texas indictment. The trial court sustained the objection.

The Court of Appeals held that the trial court erred in precluding the Petitioner from pursuing the line of cross examination. However, the Court of Appeals affirmed the Petitioner's conviction holding that the Petitioner was not prejudiced by the trial court error.

In footnote number 4 at page 5997 of its opinion the Court of Appeals stated:

> "Alexander had no opportunity to testify against Allen because Allen pleaded guilty in the Texas criminal action. This fact strengthens our conclusion that Alexander was not prejudiced by the Court's ruling. The degree of bias resulting from an unrealized intention to testify adversely in a previous action, if any, is slight indeed."

It is the Petitioner's contention that the ruling of the trial court was erroneous and that the decision of the Court of Appeals that the Petitioner was not prejudiced by the trial court's ruling which prevented him from showing the personal bias, hostility and vindictiveness of the witness was also erroneous and that Petitioner was denied his right of confrontation as guaranteed by the Sixth Amendment.

Reasons for Granting the Writ

In *Davis* v. *Alaska,* 415 U.S. 305, 94 S. Ct. 1105 (1974), this Court held that the Sixth Amendment guarantees the right of an accused in a criminal prosecution to be confronted with the witness against him. This Court's cases construing the Sixth Amendment hold that a primary interest secured by that amendment is the right of cross examination. *Douglas* v. *Alabama,* 380 U.S. 415, 418, 85 S. Ct. 1074, 1076 (1965). In the case of *Davis* v. *Alaska,* supra, the defense tried to show the existence of possible bias and prejudice of the witness. The trial court restricted the defense in this endeavor during cross examination. This Court in reversing the defendant's conviction cited *Green* v. *McElroy,* 360 U.S. 474, 496, 79 S. Ct. 1400, 1413 (1959), and said that the exposure of the motivation of a witness in testifying is a proper and important function of the constitutionally protected right of cross examination.

The partiality of a witness is subject to exploration at trial and is always relevant as discrediting the witness and affecting the weight of his testimony. The law has long recognized the force of hostile emotion as influencing the probability of truth telling and a partiality of mind is therefore always relevant as discrediting the witness and affecting the weight of his testimony. *3AJ. Wigmore, Evidence, Section 940, page 775.* The exposure of the motivation of a witness is so significant that in a criminal case curtailment of this right may amount to a denial of due process or confrontation rights. *Giglio* v. *United States,* 405 U.S. 150, 92 S. Ct. 1105 (1972).

During oral argument before the Court of Appeals, the government conceded and the Court recognized that although Allen was subjected to rigorous cross examination, none of that cross examination was directed to his personal bias, hostility and prejudice against the Petitioner. How-

ever, in its decision at page 5998, the Court of Appeals stated:

> "Even though the Court erred in holding the evidence inadmissible, we find that the defendant was not prejudiced by this error. Allen was subjected to rigorous and effective cross-examination resulting in over one hundred fifty pages of transcript. The jury was sufficiently apprised of *other bases* on which Allen's crediblity was vulnerable to attack." (Italics supplied.)

It is the Petitioner's contention that the Court of Appeals erred in its decision. Firstly, the statement made by the Court in footnote number 4 at page 5997 of its opinion regarding the lack of prejudice to Petitioner caused by the error of the trial court does not logically follow the reasons stated therein. The witness, Allen, pleaded guilty in Texas and was serving a five year prison sentence. One of the facts that caused him to plead guilty was his being advised that Petitioner was going to testify against him if he went to trial. The fact that the Petitioner did not have the opportunity to testify against Allen is not probative on the issue of Allen's state of mind, his personal bias, hostility and vindictiveness against the Petitioner.

Secondly, the fact that the jury was apprised of "other bases" which subjected Allen's credibility vulnerable to attack is not sufficient reason to hold that Petitioner was not prejudiced by being precluded from showing the personal bias, hostility and prejudice of the witness against him in particular. The jury could understand these emotions of the witness and how they could effect his credibility. The fact that the witness expected some favorable treatment from the government as a result of his testimony is not a strong bases for believing that the witness might be lying with regard to his testimony against

the Petitioner. However, bias, hostility and vindictiveness are strong factors affecting the credibility of a witness.

Under the circumstances of this case, the denial of the right to effective cross examination was constitutional error. *Brookfast* v. *Janis,* 384 U.S. 1, 86 S. Ct. 1245 (1966).

The decision of the Court of Appeals was speculative with regard to whether the Petitioner was prejudiced by the error. In fact, the Court of Appeals did not find that the Petitioner was not prejudiced by the error. The Court held that the error was not *so prejudicial* as to result in an abuse of discretion in limiting the cross examination. (Italics supplied). Thus, the Court of Appeals affirmed the conviction in spite of its finding of error and prejudice to the Petitioner.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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Appendix A, Opinion, United States Court of Appeals, Fifth Circuit.

VANCE, Circuit Judge:

The convictions appealed in this case arise out of a complex scheme to defraud investors purchasing industrial revenue bonds. Howard Alexander, James Brewer and I. Vasilios, participants in the plans, were found guilty of mail fraud, securities fraud and conspiracy to commit those offenses. 18 U.S.C. § 1341; 15 U.S.C. §§ 77q(a), 77x; 18 U.S.C. § 371. Appellants Alexander and Vasilios were tried jointly; Brewer was tried alone. Their cases, however, have been consolidated for this appeal.

The principal issues presented to this court are peculiar to the appellant urging them: whether the trial court unduly restricted Alexander's cross-examination of a prosecution witness; whether Vasilios' motion for severance should have been granted; whether the trial court erred in failing to give a cautionary instruction to the jury before a coconspirator's hearsay statements were admitted against Brewer; and whether the evidence was sufficient to support Vasilios' conviction.[1] After considering the arguments advanced by the parties, we conclude that the convictions should be affirmed.

Cross-Examination

[1] Alexander complains that the trial judge unduly restricted his cross-examination of R. J. Allen[2] by refusing

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[1] Also raised as errors are insufficient evidence supporting Alexander's conviction; admission of a coconspirator's hearsay statement against Vasilios when the conspiracy was insufficiently proved; and fatal variance between the indictment and proof adduced at the trial of Vasilios and Alexander. We have reviewed these contentions, but find them to be without merit.

[2] Allen was indicted on conspiracy, mail fraud and securities fraud charges along with Alexander. He pleaded guilty prior to trial.

to allow him to ask whether the witness knew that Alexander had planned to testify against him in a Texas criminal action. Alexander contends that this refusal denied him the opportunity to establish Allen's bias and that the denial was constitutional error since it prevented him from exercising his sixth amendment right to confront his accuser by effectively cross-examining him.[3]

[2-4] Although the trial judge is granted discretion to restrict the scope and extent of cross-examination, *e. g., Geders v. United States,* 425 U.S. 80, 96 S.Ct. 1330, 47 L.Ed.2d 592 (1976),

> this discretionary authority . . . comes into play only after there has been permitted as a matter of right sufficient cross-examination to satisfy the Sixth Amendment.

United States v. Bass, 490 F.2d 846, 858 n. 12 (5th Cir. 1974), *quoted in United States v. Elliott,* 571 F.2d 880 (5th Cir.), *cert. denied,* —— U.S. ——, 99 S.Ct. 349, 58 L.Ed.2d 344 (1978). Impeachment of a witness comports with constitutional standards when defense counsel is allowed to

> expose to the jury the facts from which jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witness.

Davis v. Alaska, 415 U.S. 308, 318, 94 S.Ct. 1105, 1111, 39 L.Ed.2d 347 (1974).

The record in the case is replete with references discrediting Allen and his testimony. Jurors were aware that he

[3] The right of an accused to effectively cross-examine an adverse witness is embodied in the confrontation clause of the sixth amendment. *Davis v. Alaska,* 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974); *Douglas v. Alabama,* 380 U.S. 415, 85 S.Ct. 1074, 13 L.Ed.2d 934 (1965); *United States v. Brown,* 546 F.2d 166 (5th Cir. 1977).

was testifying pursuant to a plea bargaining agreement; that he was a convicted felon; that he had a drinking problem; and that his business association with Alexander had been marred by frequent conflicts over management of their jointly-owned underwriting firm. When defense counsel tried to show bias through Alexander's intention to testify against Allen,[4] the trial judge disallowed the line of questioning because Alexander's decision to testify was based on a plea bargaining agreement under which he pleaded nolo contendere. The government argued for exclusion, claiming that it could not bring out Alexander's nolo plea in rebuttal. The lower court erroneously adopted this position. Contrary to the government's contention all evidentiary uses of a prior nolo plea are not prohibited. The government's brief on appeal cites *United States v. Morrow,* 537 F.2d 120 (5th Cir. 1976), *cert. denied,* 430 U.S. 956, 97 S.Ct. 1602, 51 L.Ed.2d 806 (1977), as support, but *Morrow* is inapposite, since it held only that a plea of nolo contendere may not be used

> for the purposes of impeachment or to show knowledge or intent in a proceeding different from that where the plea was offered.

Id. at 142 (footnote omitted). In Alexander's case, the nolo plea would have been used to expose all of the factors surrounding the creation of Allen's alleged bias by revealing Alexander's motive for testifying in the Texas trial. It would not have been used to impeach the defendant, Alexander, or to show his intent to commit similar crimes. *Cf. Kilgore v. United States,* 467 F.2d 22 (5th Cir. 1972)

[4] Alexander had no opportunity to testify against Allen because Allen pleaded guilty in the Texas criminal action. This fact strengthens our conclusion that Alexander was not prejudiced by the court's ruling. The degree of bias resulting from an unrealized intention to testify adversely in a previous action, if any, is slight indeed.

(plaintiff's prior nolo plea in criminal tax fraud case could be used in cross-examining his character witness in subsequent suit for tax refund).

Even though the court erred in holding the evidence inadmissible, we find that the defendant was not prejudiced by this error. Allen was subjected to rigorous and effective cross-examination resulting in over one hundred fifty pages of transcript. The jury was sufficiently apprised of other bases on which Allen's credibility was vulnerable to attack. *See United States v. Teller,* 412 F.2d 374 (7th Cir. 1969), *cert. denied,* 402 U.S. 949, 91 S.Ct. 1603, 29 L.Ed.2d 118 (1971). The issue of possible bias was also brought before the jury through Allen's testimony concerning past business dealings with Alexander.[5]

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[5] The jury could infer bias from Allen's testimony elicited on direct examination:

> [ALLEN] Well at this point there was friction going on between the two of us.
> [FARRAR] And what was the friction over?
> [ALLEN] Just the concept in running a business.
> There was an awful lot of expense and we were going one direction and going down, and there was no way to pull ourselves up or out of it, unless something was done.
> He was not going to buy me out and I thought the best thing would be to have him bought out.

On cross-examination, Allen testified,

> [BERGER] In the fall of 1973, things were getting pretty heated between you and Mr. Alexander, is that not correct?
> [ALLEN] We saw better days.
> It became more heated—around July—it was not as bad towards that time.
> [BERGER] Things were not getting heated between you and Mr. Alexander in October or November of 1973?
> [ALLEN] The word "heated"—I'm having difficulty trying to understand what you mean by "heated."
>
> . . . . .
>
> [BERGER] Do you recall testifying in January of 1977, under

(footnote continued on following page)

[5] We conclude that the restrictions on cross-examination imposed in the lower court did not rise to the level of interference with Alexander's sixth amendment rights and that the error in limiting the cross-examination was not so prejudicial as to result in an abuse of discretion. *See Gordon v. United States,* 438 F.2d 858 (5th Cir.), *cert. denied,* 404 U.S. 828, 92 S.Ct. 63, 30 L.Ed.2d 56 (1971).

Motion for Severance and Subsequent Trial

Four days before trial, Vasilios moved for a trial separate from and subsequent to that of his codefendant, Brewer, in order to introduce his exculpatory testimony. Because Brewer's appointed counsel withdrew from the case on the eve of trial, the lower court severed Brewer's trial from that of Vasilios and Alexander. Vasilios' request for a subsequent trial, however, was denied.

Vasilios concedes that the decision to grant a motion for severance or for a subsequent trial is vested in the sound discretion of the trial court, *United States v. Martinez,* 486 F.2d 15 (5th Cir. 1973) (severance); *Byrd v. Wainwright,* 428 F.2d 1017 (5th Cir. 1970) (trial sequence), but argues that the court's failure to grant his motion in this case occasioned such prejudice that his trial was rendered fundamentally unfair. *See Byrd v. Wainwright.*

(footnote continued from preceding page)

> oath—page 195—that somewhere in the time around October or November—"And I think between Bill Alexander and I things were getting a little heated"—what did you mean by "getting a little heated"?
> [COURT] Would you read the question and answer, please?
> [BERGER] "Q. When did that first come to your attention?
> "A. Some time around October or November things between Bill Alexander and I were getting a little heated."
>
> . . . . .
>
> [ALLEN] I don't think Bill Alexander and I ever had a mean word towards each other or heated; it was just a feeling that was in the air. That's what I mean by it.

Brewer submitted affidavits to the district court stating that he would be willing to testify at Vasilios' trial if it were held after his trial. The proffered testimony indicated that Vasilios exercised no independent authority in his job with Allen's underwriting firm and that his job responsibilities in the firm were directed toward cutting expenses and delivering purchased bonds. This testimony would have proved, Vasilios maintains, that he could not have been involved in the fraudulent practices charged in the indictment.

Although a severance was ultimately granted in this case, the guidelines announced by this circuit to be considered in determining when a refusal to grant a severance motion constitutes a denial of fair trial may be of aid in deciding whether the court's refusal to order Vasilios' trial subsequent to Brewer's resulted in a denial of due process:

> (1) Does the movant intend or desire to have the codefendant testify? How must his intent be made known to the court, and to what extent must the court be satisfied that it is bona fide?
>
> (2) Will the projected testimony of the codefendant be exculpatory in nature, and how significant must the effect be? How does the defendant show the nature of the projected testimony and its significance? Must he in some way validate the proposed testimony so as to give it some stamp of verity[?]
>
> (3) To what extent, and in what manner, must it be shown that if severance is granted there is likelihood that the codefendant will testify?
>
> (4) What are the demands of effective judicial administration and economy of judicial effort? Related to this is the matter of timeliness in raising the question of severance.

> (5) If a joint trial is held, how great is the probability that a codefendant will plead guilty at or immediately before trial and thereby prejudice the defendant, either by cross-defendant prejudice or by surprise as it relates to trial preparation?

Byrd v. Wainwright, 428 F.2d at 1019-20 (footnotes omitted).

[6] Here, however, all of the *Byrd* criteria were not met. Specifically, the "demands of effective judicial administration and economy of judicial effort" compel the affirmance of the lower court's action. When faced with the decision to postpone Vasilios' and Alexander's trial until after Brewer's, the court had the choice of either delaying Alexander's day in court or severing Alexander's and Vasilios' joint trial, which would have resulted in three separate trials on the same factual testimony. These alternatives are not outweighed by Vasilios' need for Brewer's testimony. Indeed, most of the same facts had been brought out earlier by the government. Further, there was ample evidence available to bring Vasilios into the sphere of illegal activities charged in the indictment. The trial court did not abuse its discretion in failing to order a later trial.

Judgment of Acquittal

Vasilios also argues that the lower court erred in failing to grant his motion for judgment of acquittal. He contends that the evidence is insufficient to support the jury's finding that he had guilty knowledge of the fraudulent activities charged in the indictment and that he had a specific intent to defraud.

[7, 8] On appeal, our standard of review is substantially the same as the standard used in determining whether the evidence is sufficient to support a guilty verdict, taking the

view most favorable to the government. *United States v. Fontenot,* 483 F.2d 315, 319 (5th Cir. 1973). The record reveals that, upon the dissolution of Allen and Alexander's partnership, Vasilios assumed Alexander's administrative responsibilities at the underwriting firm and covered for Allen during his frequent drinking binges. He exercised control over the firm's funds. Vasilios provided false and misleading information to the accountant preparing a financial statement for a shell company for whom the underwriting firm was handling a bond issue. These circumstances reveal that Vasilios was accorded a position of power and influence over the activities of the underwriting firm, which, he concedes, was involved in the fraudulent sale of bonds. It may easily be inferred that he was a part of the conspiracy to defraud purchasers of the industrial revenue bonds. *See United States v. Netterville,* 553 F.2d 903 (5th Cir.), *cert. denied,* 434 U.S. 861, 98 S.Ct. 189, 54 L.Ed.2d 135 (1977). The false representations made to the accountant indicate that he possessed specific intent to defraud. The lower court did not err in refusing to grant a judgment of acquittal as to Vasilios.

Coconspirator Instructions

Brewer's sole contention is that the court erred in failing to give an *Apollo*-type instruction to the jury when extrajudicial statements of his alleged coconspirators were introduced into evidence at his trial. *See United States v. Apollo,* 476 F.2d 156 (5th Cir. 1973). We do not agree.

[9] The instruction given was in substantial compliance with *Apollo.* Even if it were not, however, the standards and procedures established in *Apollo* were recently abolished by this court in *United States v. James,* 590 F.2d 575 (5th Cir. 1979). Although the requirements established in *James* are to be applied prospectively only, *id.* at 583, we hold that reversal for a trial court's failure to follow *Apollo* is not mandated when no substantial rights of the defendant were violated.

AFFIRMED.

Appendix B, Judgment.

UNITED STATES COURT OF APPEALS

For the Fifth Circuit

October Term, 19

No. 77-5743

D. C. Docket No. 77-6010-CR-SMA

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

I. VASILIOS, a/k/a Bill Vasilios, and
HOWARD W. ALEXANDER,

Defendants-Appellants.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

Before WISDOM, GOLDBERG and VANCE, Circuit Judges.

JUDGEMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

Appendix B, Judgment.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the convictions of the said District Court in this cause be, and the same are hereby, affirmed.

July 5, 1979

ISSUED AS MANDATE:

Appendix C, Order Denying Motion for Rehearing.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 77-5743

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

I. VASILIOS, a/k/a Bill Vasilios and HOWARD W. ALEXANDER,

Defendants-Appellants.

No. 78-5148

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAMES W. BREWER,

Defendant-Appellant.

Appendix C, Order Denying Motion for Rehearing.

Appeals from the United States District Court for the Southern District of Florida

ON PETITIONS FOR REHEARING
(August 30, 1979)

Before WISDOM, GOLDBERG and VANCE, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petitions for rehearing filed in the above entitled and numbered cause be and the same are hereby DENIED.

ENTERED FOR THE COURT:
ROBERT I. VANCE
United States Circuit Judge